IN THE

Supreme Court of the United States

October Term 1949

No. 217

ORVILLE COLLINS, H. D. BURKHEIMER, STANLEY LORD, JAMES E. DOGGETT and RALPH BAKER,

Petitioners,

vs.

HUGH HARDYMAN, MRS. EMERSON MORSE, MRS. TOSCA CUMMINGS and MRS. MABLE PRICE,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

AUBREY N. IRWIN,
Counsel for Petitioners.

GEORGE PENNY,
ROBERT M. NEWELL,
THEODORE A. CHESTER,
HENRY MELBY,
939 Rowan Building,
Los Angeles 13, California,
Of counsel.

Parker & Company, Law Printers, Los Angeles. Phone MA. 6-9171.

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The petitioners pray that a writ of certiorari issue to reverse the judgment of the United States Court of Appeals for the Ninth Circuit entered on May 29, 1950, reversing the judgment of the United States District Court for the Southern District of California.*

*References to the printed record will be thus: [R. 20], *e.g.*, page 20 of the printed record.

Jurisdiction.

The judgment of the United States Court of Appeals for the Ninth Circuit was entered May 29, 1950 [R. 61. The issues as to which the petitioners seek this Court's review involve the construction of Section 47(3) to Title 8, U. S. C. A., sometimes referred to as the Civil Rights Act. It is the position of the petitioners that the amended complaint does not set a cause of action within the jurisdiction of the Federal Courts. This issue was decided favorably to the petitioners in the lower court [R. 18] but was decided adversely to the petitioners in the U. S. Court of Appeals in a split decision [R. 61, 75].

The jurisdiction of this court is invoked under 28 U. S. C. 1254(1) and 2101(c). The relevant portions of Section 47(3) of Title 8 U. S. C. A., the statute involved, reads as follows:

> "If two or more persons in any State or Territory conspire * * *, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; * * * in any case of conspiracy set forth in this section, if one or more persons engaged herein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

Questions Presented.

It is the position of the petitioners that the foregoing statute did not have the effect of taking into Federal control the protection of private rights against invasion by private individuals and, therefore, that the Federal Courts have no jurisdiction under the cause of action set forth in the respondents' amended complaint.

The petitioners' motion to dismiss was granted by the lower court and this decision was reversed by the United States Court of Appeals which held that the amended complaint did set a cause of action within the cognizance of the Federal Courts. The correctness of the ruling of the latter court as to the jurisdiction of the Federal Courts is the subject of this petition.

Statement of the Case.

The facts are set forth in the amended complaint [R. 2]: The amended complaint, in substance, alleged that appellants are citizens of the United States and are members of the Crescenta-Canada Democratic Club. Appellant Morse is chairman of the club and appellant Hardyman is chairman of the club and appellant Hardyman is chairman of the program and publicity committee.

The Crescenta-Canada Democratic Club, hereinafter called the club, is a voluntary association, duly organized and chartered by the Los Angeles County Democratic Central Committee and recognized officially as a Democratic club. Its claimed purposes were to participate in the election of officials of the United States, including the

President, Vice-President and members of Congress; to petition the National Government for redress of grievances; to engage in public meetings for the discussion of national public issues, including the international and foreign policies of the United States.

Pursuant to a customary practice the club held regular public meetings in the City of La Crescenta at which affairs of national interest and importance were discussed and such action taken thereon as the members deemed advisable. The club arranged for and scheduled a public meeting in the city of La Crescenta for the evening of November 14, 1947, at which a named speaker was to discuss the foreign policy of the United States, including the Marshall plan. The discussion was to be participated in by the members of the club and others attending the meeting. It was also understood, that at said meeting a resolution would be presented opposing the Marshall plan with the understanding that such a resolution, if passed, would be forwarded to the President of the United States, the State Department and members of Congress. Said resolution was intended to be a petition for redress of grievances with respect to the Marshall plan. At previous meetings similar resolutions had been adopted and forwarded to officials of the Government.

Appellees, having knowledge that a meeting of the club was to be held November 14, and also being informed of the program and purposes of said meeting, entered into a conspiracy to break up said meeting and to prevent the adoption and transmission of the proposed resolution. In

furtherance of such conspiracy appellees went to the building in which the meeting was being held, threatened to and did assault appellants, ordered those attending the meeting to leave and thus forced those in attendance to disperse and by threats and violence prevented those attending the meeting from adopting and transmitting the proposed resolution. Appellees had not conspired or interfered with public meetings held with the knowledge of appellees by organizations expressing views with which appellees agreed and at which resolutions were adopted respecting the foreign policies of the United States.

The trial court held that Section 47(3) of Title 8 U. S. C. A. does not sanction a cause of action against private individuals who interfere with the privilege of assembling to petition Congress and to discuss national affairs unless the interference is committed by the State or a person acting in authority thereof. The majority opinion of the court of Appeals held that this statute would create a cause of action for money damages against private individuals who interfere with a plaintiff in the exercise of his Federal rights, triable in the federal courts.

Reasons for Granting the Writ.

1. It is necessary that this court grant a writ of certiorari in order to secure uniformity of decisions. At the present time there is an irreconcilable conflict in the decisions on this matter in the United States Courts of Appeals. Until the decision in question, the only cases that had decided the matter held that Section 47(3) gave Federal protection only against State action. *Love v. Chandler* (8 Cir. 1942), 124 F. 2d 785; *Viles v. Symes* (10 Cir. 1942), 129 F. 2d 828. The instant case is contrary to these decisions and holds that the statute confers Federal jurisdiction protection against the acts of private individuals.

2. The decision of the court of Appeals in the case before the bar is one of unparalleled gravity and importance in its potential effect on the volume of litigation to be handled by the Federal courts. If it is allowed to stand, it is probable that the Federal courts will be flooded by an unprecedented number of cases concerning matters which have heretofore been considered as within the exclusive province of State courts. By virtue of this decision, every person in the United States, who fancies that his right to discuss any Federal question has been infringed upon by his neighbor, would be entitled to come into the Federal courts and seek money damages. Trespass, assault and battery, and other similar complaints will occupy a substantial portion of the court's time without the limiting factor of the diversity of citizenship required to minimize the volume of such actions. If the Federal courts are going to resurrect a statute almost a century old and give it a new twist, which will open a whole new phase of litigation to the Federal courts, at the very least, this rebirth should be attested to by this court.

Argument.

The argument that the petitioners would urge this court to consider is ably set forth in Judge Healy's carefully reasoned dissenting opinion [R. 75] and in the carefully annotated decision of Judge Yankwich, the trial judge, who granted petitioner's original motion to dismiss [R. 18]. It would serve no useful purpose to reword or rephrase these opinions.

However, a few brief observation seem in order. First of all, paradoxically enough, the majority opinion is based upon a decision which declared unconstitutional a statute somewhat broader than the one before this court. *United States v. Harris,* 106 U. S. 629, and the extraneous *dicta* contained in that case are indeed faint authority for the conclusion reached by the majority of the court. There is no doubt that Section 47(3) in its original enactment was passed by Congress at a time when it thought that it could legislate to protect civil rights from individual action. Indeed the Act was entitled "An Act To Enforce the 14th Amendment". Commencing with the *Civil Rights Case,* 109 U. S. 3, this court has consistently held that Congress was in error in its conception of its powers under the 14th Amendment. It would seem that, rather than give an unprecedented interpretation to a long dormant statute, the judiciary should await a clear expression from the Legislature before discovering an entirely new body of law and actions over which the Federal Courts have jurisdiction.

It should also be borne in mind that, while the language of the criminal statute is similar to the statute in issue, it is fundamentally different. That is to say, 18 U. S. C. A., Section 241 reads in part, "If two or more persons conspire to injure, oppress, threaten or intimidate any citizen

in the free exercise or engagement of *any* right or privilege secured to him by the Constitution of the Laws of the United States . . ." As pointed out in Judge Healy's dissent, the crucial language of 47(3) "for the purpose of *depriving,* either directly or indirectly, any *person* or *class* of persons of the *equal protection of the laws,* or of *equal privileges and immunities under the laws.*" [R. 77]. The difference in language is of fundamental importance as Judge Yankwich and Judge Healy pointed out, the inclusion of the word "equal" in Section 47(3) is of no little import. To rely on the cases which have construed the criminal statute is to ignore this important difference of language and meaning of the respective statutes. Furthermore, the majority opinion, which is not altogether clear in its meaning, is diametrically opposed in the case of *Love v. Chandler, supra.*

Conclusion.

The petitioner's Petition for a Writ of Certiorari should therefore be granted.

Respectfully submitted,

AUBREY N. IRWIN,
Counsel for Petitioners.

GEORGE PENNY,
ROBERT M. NEWELL,
THEODORE A. CHESTER,
HENRY MELBY,
Of counsel.